

**SANITIZED DECS. 05-107 P(R), 05-108 P(R) & 05-109 P(R) – BY GEORGE V. PIPER
– SUBMITTED FOR DECISION 4/21/05 – ISSUED 6/17/05**

SYNOPSIS

PERSONAL INCOME TAX – FAILURE TO FILE RETURN FOR 1999 -- “WILLFUL NEGLIGENCE”-- Notwithstanding Petitioner’s testimony that he and his wife had filed a North Carolina Individual Income Tax Return for the year 1999, other evidence revealed conclusively that said testimony was perjurious and that no such return had ever been filed; therefore, the failure to file a West Virginia resident return for that year constitutes willful neglect precluding waiver of additions to tax.

PERSONAL INCOME TAX – FAILURE TO FILE RETURNS FOR 2000 AND 2001 -- “WILLFUL NEGLIGENCE” -- Notwithstanding the fact that Petitioners had an ongoing dispute with the Internal Revenue Service, Petitioners knew all along that they were West Virginia residents for tax years 2000 and 2001 and failing to file timely West Virginia Resident Personal Income Tax Returns for those years constitutes willful neglect precluding waiver of additions to tax.

FINAL DECISION

On December 30, 2003, the Internal Auditing Division of the West Virginia State Tax Commissioner’s Office issued a personal income tax assessment against the Petitioners. This assessment was issued pursuant to the authorization of the State Tax Commissioner, under the provisions of Chapter 11, Articles 10 and 21 of the West Virginia Code. The assessment was for the year 1999, for tax, interest, and additions to tax, for a total assessed liability of \$. Written notice of this assessment was served on the Petitioners.

Also on December 30, 2003, the Commissioner issued a personal income tax assessment against the Petitioners, under the provisions of Chapter 11, Articles 10 and 21 of the West Virginia Code, for the year 2000, for tax, interest, and additions to tax, for a total assessed liability of \$. Written notice of this assessment was served on the Petitioners.

Finally, also on December 30, 2003, the Commissioner issued a personal income tax assessment against the Petitioners, under the provisions of Chapter 11, Articles 10 and 21 of the West Virginia for the year 2001, for tax, interest, and additions to tax, for a total assessed liability of \$. Written notice of this assessment was served on the Petitioners.

Thereafter, by mail postmarked April 13, 2004, the Petitioners timely filed with this tribunal, the West Virginia Office of Tax Appeals, petitions for reassessment. *See* W. Va. Code § 11-10A-8(1) [2002].

Subsequently, notice of a hearing on the petition was sent to the Petitioners and a hearing was held in accordance with the provisions of W. Va. Code § 11-10A-10 [2002] and 121 C.S.R. 1, § 61.3.3 (Apr. 20, 2003).

FINDINGS OF FACT

1. At the hearing the Petitioner-husband testified that Petitioners and the Internal Revenue Service were involved in a controversy over whether he was or was not self-employed as far back as 1994, and that he did not file West Virginia resident personal income tax returns for tax years 2000 and 2001 until years later.

2. Petitioner further testified that he and his wife were residents of West Virginia for the years 2000 and 2001; however, for the preceding year of 1999, they were residents of the State of North Carolina. Note: On page twenty-six (26) of the hearing transcript, the Petitioner-husband testified that he completed his home in West Virginia on November 18, 1999. Also, State's Exhibit Number 4 shows that the husband, in a letter to the Respondent (no date), stated that he and his wife became West Virginia residents when they moved into their home on November 2, 1999.

3. Petitioner also testified that Petitioners filed a 1999 North Carolina personal income tax return and that the same was accepted some years later and was of record.

4. At the close of the hearing, Respondent's counsel produced a fax from the North Carolina Department of Tax and Revenue indicating that as of May, 2004, no North Carolina personal income tax return by the Petitioners had ever been filed with the State of North Carolina for tax year 1999.

5. The administrative law judge allowed both sides the opportunity to supplement the record, post hearing, for a period not to exceed thirty (30) days, especially with regard to tax year 1999, because the veracity of Petitioner's testimony had been called into question.

6. On May 13, 2005, a tax official with the North Carolina Department of Revenue certified, by letter, that a thorough search had been made and that no record of North Carolina Individual Income Tax Returns for the years 1999, 2000 and 2001 had ever been filed by Petitioners.

7. It should be noted that Petitioners never supplemented the hearing record within the thirty (30)-day period allowed by the administrative law judge.

8. Prior to the time of the hearing, Petitioners paid the assessed personal income tax, interest, and additions to tax to the State of West Virginia for tax years 1999, 2000, and 2001.

DISCUSSION

The first issue is whether Petitioners have shown the lack of willful neglect and the existence of reasonable cause for waiver of additions to tax with respect to the tax year 1999.

At the hearing, the presiding administrative law judge told the Petitioner that if he did in fact ultimately file a resident return with the State of North Carolina for tax year 1999, that fact would be taken into account with respect to the additions to tax imposed by the State of West Virginia for tax year 1999, because Petitioners could have reasonably believed that they would not have to pay twice on the same income to two (2) different states.

Unfortunately, Petitioner did not tell the truth, because Respondent proved by documentary evidence that no such return was ever filed with the State of North Carolina.

Having failed to file said North Carolina return leaves this tribunal no alternative but to affirm the additions to tax for 1999, because Petitioners never filed either a North Carolina or a West Virginia personal income tax return for five (5) years. This conduct constitutes willful neglect precluding waiver of additions to tax for the tax year 1999.

The second issue is whether Petitioners have shown the lack of willful neglect and the existence of reasonable cause for waiver of additions to tax for tax years 2000 and 2001.

To begin with, Petitioner testified that they (Petitioners) knew that they were West Virginia residents for the years 2000 and 2001. That fact obligated Petitioners to file timely personal income tax returns with the State of West Virginia, regardless of whether they had an ongoing matter with the Internal Revenue Service which impacted those years.

Because the failure to file an income tax return known or reasonably should have been known to be required constitutes willful neglect, this tribunal has no legal recourse but to refuse waiver of the additions to tax for 2000 and 2001.

CONCLUSIONS OF LAW

Based upon all of the above it is **HELD** that:

1. In a hearing before the West Virginia Office of Tax Appeals on a petition for reassessment, the burden of proof is upon a petitioner-taxpayer, to show that reasonable cause exists for waiver of additions to tax. *See* W. Va. Code § 11-10-18(a)(1)-(2), and W. Va. Code § 11-10A-10(e).

2. The Petitioners-taxpayers in this matter have failed to carry the burden of proof with respect to their contention that the additions to tax for tax years 1999, 2000, and 2001 should be waived. *See* 121 C.S.R. 1, § 69.2 (Apr. 20, 2003).

DISPOSITION

WHEREFORE, it is the **FINAL DECISION** of the **WEST VIRGINIA OFFICE OF TAX APPEALS** that the personal income tax assessment issued against the Petitioners for the year 1999, for tax, interest, and additions to tax, totaling \$, should be and is hereby **AFFIRMED**.

Because the Petitioners have previously remitted the entire amount of the assessment for 1999, **no** amount of tax, interest, or additions to tax **remains due** to the State Tax Commissioner of West Virginia for that year.

It is **ALSO** the **FINAL DECISION** of the **WEST VIRGINIA OFFICE OF TAX APPEALS** that the personal income tax assessment issued against the Petitioners for the year 2000, for tax, interest, and additions to tax, totaling \$, should be and is hereby **AFFIRMED**.

Because the Petitioners have previously remitted the entire amount of the assessment for 2000, **no** amount of tax, interest or additions to tax **remains due** to the State Tax Commissioner of West Virginia for that year.

It is **ALSO** the **FINAL DECISION** of the **WEST VIRGINIA OFFICE OF TAX APPEALS** that the personal income tax assessment issued against the Petitioners for the year 2001, for tax, interest, and additions to tax, totaling \$, should be and is hereby **AFFIRMED**.

Because the Petitioners have previously remitted the entire amount of the assessment for 2001, **no** amount of tax, interest or additions to tax remains due to the State Tax Commissioner of West Virginia for that year.

It is **ALSO** the **FINAL DECISION** of the **WEST VIRGINIA OFFICE OF TAX APPEALS** that the Petitioners' petitions for refund, for the additions paid under protest, are **DENIED**, for the same reasons discussed above.